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United States Senate

COMMITTEE ON SMALL BUSINESS
WASHINGTON, DC 20510-6350

August 8, 2000

Chairman William Kennard
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

By Facsimile: (202) 418-2801

Re: Amendment of Part 15 of the Commission's Rules Regarding
Spread Spectrum Devices, ET Docket 99-231, *Ex Parte Filing*

Dear Chairman Kennard:

On July 20, 1999, the Federal Communications Commission (Commission) published a notice of proposed rulemaking (NPRM) to revise the rules under Part 15 governing wireless computer networking equipment that is commonly targeted to the small office and home office user. As recognized in the NPRM, section 603 of the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires the Commission to prepare an Initial Regulatory Flexibility Analysis (IRFA) on the proposed rule. We are of the opinion that this rulemaking does not meet the statutory requirements of the Regulatory Flex Act, and that the IRFA (attached) clearly does not meet Congress's intention for a full review of the impact of the rulemaking on small businesses. Therefore, we urge you to withhold finalizing this regulation until an acceptable and appropriate IRFA is conducted and published.

At a minimum, as mandated by the Regulatory Flexibility Act, a properly conducted IRFA would accurately describe the reasons for the rulemaking, describe the full impacts on affected small businesses, and provide at least one regulatory alternative for reducing the impacts on small businesses. Affected small businesses could include manufacturers of computer peripheral equipment with less than 1,000 employees, manufacturers of household appliances with less than 500 employees, and manufacturers of communications equipment with less than 750 employees. A properly conducted IRFA would describe these categories of affected small businesses.

The FCC's IRFA fails to meet the requirements of the statute in three ways. First, it states that the "reason for action" is to obtain comment on the proposal. The Regulatory

Flexibility Act directs the agency, or in this case the FCC, to describe why the action, i.e. the rule change, is being taken. (See Section 603 (b)(1).) FCC's IRFA merely states that the "rule making proceeding is initiated to obtain comment regarding proposed changes to the regulations for non-licensed transmitters." This describes the reason for publication of the NPRM in the Federal Register, but it does not describe the underlying reason for the proposed rulemaking which is the question posed by the Regulatory Flexibility Act. The IRFA also does not discuss the nature and extent of the reporting, recordkeeping and other compliance requirements including the professional skills necessary to satisfy the reporting and recordkeeping requirements as required by the Regulatory Flexibility Act. (See Section 603 (b)(4).) Finally, it fails to offer for consideration even a **single** alternative that would minimize the impact on small businesses, again, as required by Section 603 (c) of the Regulatory Flexibility Act. We thus concur with the comments of the Office of Advocacy that the net result of these failings is that the IRFA, "provides no information to which the public can react in an informed manner." (Comments of the Office of Advocacy, October 4, 1999, page 2, attached.)

Perhaps of even greater importance, a properly conducted IRFA would examine the impacts on the small businesses which purchase and operate this equipment. As operators of telecommunications equipment certified under Part 15, these purchasers are subject to the regulatory authority of the Commission and therefore fall clearly within the scope of the IRFA. The docket for this rulemaking appears to raise serious concerns that devices approved under the rule could cause interference with similar devices already operating - and likely to be purchased in the near future by small businesses. Consumer and industry investment in this technology continues to increase exponentially. For example, it has been estimated by the Small Business Administration that small and home-based businesses spent \$9 billion on computer networking technologies in 1999 alone. The 2.4 GHz wireless equipment industry estimates that consumers spent \$1 billion in 1999 on their wireless equipment, and they project that consumers will spend \$3 billion on such equipment (all of which was developed based on current FCC rules) this year.

As the Chairman and Ranking Member, we have a special interest in compliance with the Regulatory Flexibility Act. While we are not taking a position on, or judging the interference claims raised in the docket, or their merits, we firmly believe that this possible impact on vast numbers of small business purchasers of this equipment must be assessed under the Regulatory Flexibility Act. As a result, we concur with the Office of Advocacy's request that, "the Commission should not establish final rules in this proceeding until it has conducted a proper initial regulatory flexibility analysis and [should] seek comment both on the effect of its proposal on small business and on its analysis of regulatory alternatives." (Comments of the Office of Advocacy, October 4, 1999, page 2.)

We ask that you provide the Senate Committee on Small Business with a copy of a revised IRFA that meets the requirements of the Regulatory Flexibility Act prior to moving forward with this rulemaking, and ask that you submit it to the Committee no later than September 15, 2000. Thank you for your prompt attention to our request. If you have any

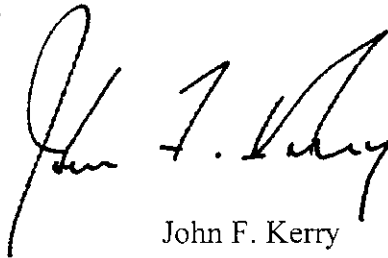
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questions or concerns, please contact Marc Freedman of Senator Bond's staff at (202) 224-5175,
or Patricia Forbes for Senator Kerry at (202) 224-8496.

Sincerely,



Christopher S. "Kit" Bond
Chairman



John F. Kerry
Ranking Member

cc: Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Susan Ness
Commissioner Gloria Tristani

Secretary to the Commission,
Magalie Roman Salas